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MEMORANDUM
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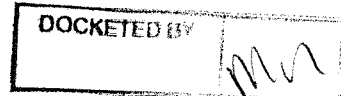
FROM: Steven M. Olea
Director
Utilities Division

Arizona Corporation Commission

DOCKETED

OCT 29 2009

DATE: October 29, 2009



RE: BALTERRA SEWER CORP. - DOCKET NO. SW-020403A-05-0586

In Decision No. 68742, dated June 5, 2006, the Arizona Corporation Commission ("Commission") approved the application of Balterra Sewer Corp. ("Balterra" or "Company") for a Certificate of Convenience and Necessity ("CC&N") to provide wastewater service in Maricopa County, Arizona. As part of Decision No. 68742, the Commission ordered the following:

"Balterra Sewer Corporation shall file with Docket Control, as a compliance item in this docket, a copy of the Approval of Construction that Maricopa County Environmental Services Department will issue for the proposed Phase I sewer collection system no later than March 31, 2008."

On April 9, 2007, Balterra filed a motion to extend the time to comply with certain compliance requirements from Decision No. 68742. On May 21, 2007, the Commission issued a procedural order granting the Company's motion for extension. In this matter, the Section 208 Plan was extended to August 31, 2007, the Approval to Construct was extended to October 30, 2007, the Approval of Construction was extended to September 30, 2009 and the Aquifer Protection Permit and/or Arizona Pollutant Discharge System Permit was extended to November 30, 2008.

The Company subsequently complied with the requirements relating to the Section 208 Plan, the Approval to Construct and the Aquifer Protection Permit ("APP") and/or the Arizona Pollutant Discharge Elimination System Permit ("NPDES"). The Approval of Construction ("AOC") represents the only remaining compliance item of those originally extended.

On September 30, 2009, Balterra made a supplemental filing titled "Motion For Extension Of Time". The application states that the Company seeks to extend the required due date on the Approval of Construction from September 30, 2009 to September 30, 2013.

In the application, the Company states that the delay regarding the AOC is due to the downturn in the Arizona housing market and that this has forced Balterra to choose between seeking further extension and "...building the Phase I sewer system before it is needed simply to comply with the Decision". Balterra further stated that while it has not made the "substantial investment needed to construct the Phase I facilities and obtain the AOC", Global Water Resources ("Global") and Balterra have made substantial investments in compliance with Decision No. 68742. These include the ability to offer integrated water, wastewater and recycled water services, a lengthy and

expensive process to obtain and provide the Section 208 Plan Amendment, the provision of the NPDES permit, obtaining and providing the ATC, obtaining and providing the Maricopa County Franchise and participation in an extensive and long running Arizona Department of Water Resources assured water supply review for the lower Hassayampa Sub-basin.

Staff Recommendation

Staff remains concerned about both the number and relative lengths of utility company extension requests. While Staff is aware of the difficulty in the housing market and the slowdown in development, Staff is still concerned with CC&Ns that are being held by firms with projects where development has been placed on severe hold or which could potentially never occur. In this case, the date of the original decision was June 5, 2006 and the new request for extension was made on September 30, 2009. It has been more than three years and four months since the decision which generated this compliance requirement. While the Company application does not provide a new date of expected construction, based on the Company proposed extension date of September 30, 2013, it appears to be another four years until the construction would be expected to be completed.

Staff is concerned that the Company application proposes an extension of time which would result in more than a seven year period in which the CC&N could remain in a state of delay. By most all accounts, this appears an excessive length of time. Further, the current four year request from September 30, 2009 to September 30, 2013 is in itself excessive for a subsequent extension request, especially with the consideration that there appears no actual need for the CC&N in the foreseeable future. Further, the application did not include requests from the developer(s) that indicated an ongoing need for service and, despite several Staff telephonic requests, the Company has still not provided letters in that regard. Finally, there is always a concern that the original set of conditions and specific information, upon which the original CC&N rates were developed, is becoming outdated.

Based on all of the above, Staff recommends denial of Balterra's request for further extension of time until September 30, 2013, relating to the provision of the required AOC for the Phase I sewer collection system. In the alternative, Staff recommends that the Commission issue an Order Preliminary utilizing the Utility's proposed September 30, 2013 date for compliance. Staff additionally provides notice to Balterra that the Company is technically out of compliance regarding the AOC pending the Commission decision in this matter.

SMO:BKB:lhbm

Originator: Brian K. Bozzo

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DOCKET NO. SW-20403A-05-0586

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